

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ESMEREGILDO ALMAGER,

Applicant,

v.

No. CV 11-162 JH/KBM

ERASMO BRAVO, et al.,

Respondents.

ORDER

THIS MATTER having come before the Court on Applicant's motion to proceed in forma pauperis (*Doc. 2*), which is well taken and will be granted.

Petitioner also filed a Motion for Appointment of Counsel (*Doc. 3*). There is no constitutional right to counsel in habeas proceedings and the decision whether the appoint counsel is left the court's discretion. Ordinarily, there is no reason to appoint counsel unless the case has reached the stage of the proceedings where an evidentiary hearing is required. See e.g., *United States v. Leopard*, 170 F.3d 1013 (10th Cir. 1999) (§ 2255 case); *Swazo v. Wyoming Dept. of Corrections*, 23 F.3d 332 (10th Cir. 1994) (§ 2254 case); see also *Karls v. Hudson*, 182 F.3d 932 (10th Cir.) (unpublished) (§ 2241 case), cert. denied, 528 U.S. 987 (1999). This case has not reached that stage and, accordingly, appointment of counsel is not warranted at this time.

Wherefore,

IT IS ORDERED that the motion to proceed pursuant to 28 U.S.C. § 1915 is hereby GRANTED, and Applicant may proceed without prepayment of costs or other fees or the necessity of giving security therefor.

IT IS FURTHER ORDERED that Plaintiff's Motion for Appointment of Counsel is
DENIED at this time.


UNITED STATES MAGISTRATE JUDGE